

STATE OF MICHIGAN  
COURT OF APPEALS

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ISAAC SUDUT, as Personal Representative for  
the Estate of Karen Sudut, Deceased,

Plaintiff-Appellant,

v

BOTSFORD GENERAL HOSPITAL d/b/a  
BOTSFORD PRIMARY CARE PHYSICIANS,  
JULIE GULIZIA, D.O., DAVID ROTHENBERG,  
D.O., AND BOTSFORD GENERAL HOSPITAL,

Defendants-Appellees.

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UNPUBLISHED  
February 1, 2007

No. 271399  
Wayne Circuit Court  
LC No. 05-501586-NM

Before: Saad, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right the summary dismissal of this medical malpractice case, after plaintiff's motion for voluntary dismissal was denied, on the ground that the statute of limitations expired and equitable tolling did not apply. We affirm.

Plaintiff's decedent died on November 28, 2001, following the alleged failure to properly treat a medical problem for which the decedent began seeking care on November 8, 2001, including on November 12, 2001, and November 18, 2001. Plaintiff was appointed as Personal Representative of the decedent's estate on August 16, 2002. A Notice of Intent was filed on August 16, 2004, and the complaint was filed on January 18, 2005.

Subsequently, defendants moved for summary dismissal on the ground that, pursuant to the applicable statutes of limitation, i.e., MCL 600.5805, 600.5838a, 600.5852, and *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004), the action was untimely. Plaintiff responded to defendants' motion for summary dismissal, arguing that the action was timely filed under the notice tolling provision articulated in *Omelenchuk v City of Warren*, 461 Mich 567; 609 NW2d 177 (2002), that was subsequently, and wrongly, overruled by *Waltz, supra*, which held that the filing of a Notice of Intent did not toll the wrongful death savings provision. Plaintiff requested that the court "disregard Waltz, and apply Omelenchuck . . . ." In the alternative, plaintiff argued that principles of equity, as held in *Mazumder v Univ of Michigan Regents*, 270 Mich App 42; 715 NW2d 96 (2006), should apply to toll the statute of limitations. And, thereafter, plaintiff moved to enter a voluntary dismissal without prejudice to permit a successor personal

representative, pursuant to MCL 600.5852, to file an action in compliance with the statutes of limitation.

The trial court granted defendants' motion for summary disposition and denied plaintiff's motion for voluntary dismissal. First, the court noted that it was undisputed that the action was not timely filed and declined to ignore *Waltz*, binding precedent. Second, the court declined to apply the principle of equitable tolling in this case because plaintiff did not exercise reasonable diligence in filing his claim. Third, the court denied plaintiff's motion to voluntarily dismiss the action without prejudice on the ground that the terms of plaintiff's proposed order were unacceptable because the payment of fees and costs were not included. This appeal followed.

Plaintiff argues that the trial court should have applied the doctrine of equitable tolling to this otherwise time-barred case. See *Mazumder*, *supra* at 62. After de novo review of the trial court's decision to summarily dismiss this case under MCR 2.116(C)(7), we disagree with plaintiff. See *Ousley v McLaren*, 264 Mich App 486, 490; 691 NW2d 817 (2004).

In *Ward v Siano*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (2006) (Docket No. 265599, issued November 14, 2006), this Court recently overruled the portions of the *Mazumder* opinion that plaintiff relies upon in support of his argument that the doctrine of equitable tolling should be applied to this case because the applicable law was confusing. Specifically, the *Ward* Court rejected the argument that confusion about the law as it existed before *Waltz* justified the application of the doctrine. To the contrary, this Court held that the "plaintiff failed to demonstrate any inequity independent of his unknowing failure to comply with the retroactive time limits delineated in *Waltz*. This 'inequity' is inadequate to sustain a claim for judicial tolling, because it is directly related to plaintiff's unassisted failure to comply with the retroactively applicable time restraints, not on intervening, external circumstances." *Id.*, slip op at 3. Therefore, plaintiff's argument is without merit.

Next, plaintiff argues that the trial court abused its discretion when it denied his motion for voluntary dismissal without prejudice. After review of the trial court's ruling for an abuse of discretion, we disagree. See *McLean v McElhaney*, 269 Mich App 196, 201; 711 NW2d 775 (2005).

MCR 2.504(A)(2) provides that an action may be dismissed at a plaintiff's request by court order, on terms and conditions the court deems proper. Here, however, summary dismissal was properly granted because plaintiff's action was time-barred. Because the action was time-barred, the trial court did not abuse its discretion when it denied plaintiff's motion for voluntary dismissal. Therefore, although the trial court's reason for denying plaintiff's motion for voluntary dismissal did not comport with the record evidence, it reached the right result albeit for the wrong reason and need not be reversed. See *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411, n 10; 443 NW2d 340 (1989).

Affirmed.

/s/ Henry William Saad  
/s/ Mark J. Cavanagh  
/s/ Bill Schuette